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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/506,443    02/18/00    KAWAZURA

T    P21-9056

IM22/0504  
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WASHINGTON DC 20036-5339

EXAMINER

MULLIS, J

ART UNIT

PAPER NUMBER

1711

DATE MAILED:

05/04/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



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IM52/0405

Nikaido Marmelstein Murray & Oram LLP  
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# Office Action Summary

Application No.

09/506,443

Applicant(s)

Kawazura et al.

Examiner

Jeffrey Mullis

Group Art Unit

1711

☒ Responsive to communication(s) filed on Jul 20, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-17 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-17 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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It is assumed that the references and patents cited in the instant specification are not pertinent to patentability since they have not been submitted.

Claims 1-17 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The term "molecular weight" is unclear where not qualified as to the type of molecular weight, for instance weight or number average molecular weight. This is so because weight and number average molecular weights may differ drastically.

It is not clear what is embraced by the parameters " $S_A$ " and " $S_B$ " in that these parameters are not defined. Similarly, other parameters  $S_\alpha$  and  $S_\beta$  are also not defined and are unclear.

It is not clear what is embraced by the "at least one polymer selected from the group consisting of" in claim 14 since it is not clearly delineated whether or not said polymer is to be chosen solely from polymer  $\alpha$  or is intended to be chosen from polymers  $\alpha$  or  $\beta$ . Claim 14 can be interpreted as requiring the presence of 5-200 parts by weight of the at least one polymer  $\alpha$  and additionally a polymer  $\beta$  or may be interpreted such that the "at least one polymer" may only be at least one polymer chosen from either  $\alpha$  or  $\beta$ .

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It is not clear what is embraced by the "low molecular weight portion of the polymer forming the polymer phase" in that the term "low" is subjective. Furthermore reference to a low molecular weight portion of a context of polymers which contain a distribution of molecular weights is of itself vague since any part of said distribution can be said to be a portion.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kawazura et al. (USP 5,679,744).

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Kawauzura et al. disclose a composition in which two different incompatible rubbers are blended with an AB block copolymer which is as a block compatible with one rubber component and incompatible with the other. Note column 4 lines 22-54 in this regard. While it is not clear that applicants' characteristics are inherent in the composition, all other features are present and these characteristics are therefore assumed to be inherent.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Any inquiry concerning this communication should be directed to Jeffrey Mullis at telephone number (703) 308-2820.

J. Mullis:cdc

April 2, 2001

Jeffrey Mullis  
Primary Examiner  
Art Unit 1711

